

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

KENNETH R. MORGAN,	)	
	)	
Appellant,	)	
	)	
v.	)	MSPB Docket No. CH07528110441
	)	
DEPARTMENT OF THE NAVY,	)	EEOC Petition No. 03830008
	)	
Agency.	)	Date: JUL 26 1985
	)	

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ORDER

This case is before the Board pursuant to 5 U.S.C. § 7702(b)(5)(B). On March 22, 1985, the Board reopened the record to receive additional evidence as to the effective date of appellant's disability retirement. Counsel for appellant responded that although her files contained no documentation as to the effective date of retirement, she believed it to be the date of removal. Although the agency was contacted twice by the Board, it declined to submit a response.

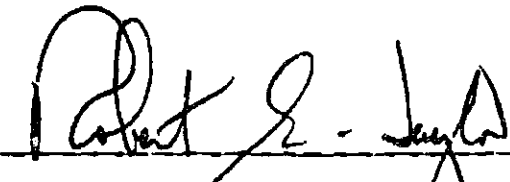
The issue of the Board's jurisdiction may be raised at any time during a proceeding. If appellant's disability retirement was retroactively effective on or before the date of his removal, this matter would appear to be moot and the Board might not have further jurisdiction to adjudicate his appeal. See Washington v. Tenn. Valley Auth., 22 M.S.P.R. 377 (1984) in which the Board found that an intervening event, which would have removed the appellant from his position, terminated an otherwise valid entitlement to reinstatement and pay back. Accordingly, the

agency is ORDERED to produce documentation of the effective date of appellant's disability retirement within 10 days of receipt of this order. Such documentation shall consist of, at a minimum, the relevant SF-50's relating to the disability retirement, and may be supported by affidavits or other evidence. Counsel for appellant is then afforded 10 days from the date of receipt of the agency's response to submit a reply.

In addition, the Office of Personnel Management has informed the Board that Mr. Morgan died in 1983. Pursuant to 5 C.F.R. § 1201.35, a motion for substitution should have been filed by his representative or a proper party within 90 days of his death. Accordingly, appellant's representative may file a motion for substitution within 10 days of receipt of this order, provided that a motion for an enlargement of time for filing the motion is submitted simultaneously with the motion for substitution. The agency may file a response to the motion within 10 days of the date of receipt. The parties shall serve each other with copies of all submissions at the same time they are filed with the Board.

FOR THE BOARD:

Washington, D.C.

  
Robert E. Taylor  
Clerk of the Board